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Effects of foreign debt and other related international financial obligations of States on the full enjoyment of all human rights, particularly economic, social and cultural rights

Note by the Secretary-General

The Secretary-General has the honour to transmit to the General Assembly the report of the independent expert on the effects of foreign debt and other related international financial obligations of States on the full enjoyment of all human rights, particularly economic, social and cultural rights, Cephas Lumina, submitted pursuant to Human Rights Council resolution 7/4.

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Report of the independent expert on the effects of foreign debt and other related international financial obligations of States on the full enjoyment of all human rights, particularly economic, social and cultural rights

Summary

In the present report, submitted in accordance with Human Rights Council resolution 7/4, the independent expert on the effects of foreign debt and other related international financial obligations of States on the full enjoyment of all human rights, particularly economic, social and cultural rights, outlines his vision and plan of implementation for the mandate.

The independent expert presents a brief overview of the engagement of United Nations human rights bodies with the issue of foreign debt, highlighting some of the key challenges. He then outlines his approach to the mandate, drawing attention to the principles which will guide his work and the broad objectives to be pursued in the context of the mandate: the primacy of human rights, international cooperation, participation and the responsibilities of all actors. The report identifies three broad objectives for the mandate: to raise awareness of the need to consider foreign debt as a human rights issue and generally broaden support for the mandate through regular dialogue with all stakeholders (including States that have not traditionally supported the mandate); to clarify some conceptual issues, including the linkages between foreign debt and human rights; and to review, revise and develop the draft general guidelines, which are designed to ensure that compliance with commitments arising from external debt does not undermine the capacity of States to fulfil their human rights obligations, particularly those relating to economic, social and cultural rights. Finally, the independent expert sets out his plan for the achievement of those objectives.

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I. Introduction

1. In its resolution 7/4 of 27 March 2008, the Human Rights Council decided to redefine the mandate of the independent expert on the effects of economic reform policies and foreign debt on the full enjoyment of all human rights, particularly economic, social and cultural rights, and to rename the special thematic procedure "independent expert on the effects of foreign debt and other related international financial obligations of States on the full enjoyment of all human rights, particularly economic, social and cultural rights". The Council also decided to extend the mandate of the independent expert for a period of three years.

2. The present report is submitted in accordance with Council resolution 7/4.

3. The independent expert was requested to pay particular attention to:

(a) The effects of foreign debt and the policies adopted to address them on the full enjoyment of all human rights, particularly economic, social and cultural rights in developing countries;

(b) The impact of foreign debt and other related international financial obligations on the capacity of States to design and implement policies and programmes, including national budgets that respond to the vital requirements for the promotion of the realization of social rights;

(c) Measures taken by Governments, the private sector and international financial institutions to alleviate such effects in developing countries, especially the poorest and heavily indebted countries;

(d) New developments, actions and initiatives being taken by international financial institutions, other United Nations bodies and intergovernmental and non-governmental organizations with respect to economic reform policies and human rights;

(e) Quantification of minimum standards to support the realization of the Millennium Development Goals;

(f) Enhancement of consultations with all relevant stakeholders in the fulfilment of his mandate.

4. The Council further requested the independent expert to participate in and contribute to the process entrusted with the follow-up to the International Conference on Financing for Development in order to bring to its attention the broad scope of his mandate; to seek the views and suggestions of various stakeholders, including States, international organizations, United Nations agencies, funds and programmes, regional economic commissions, international and regional financial institutions and non-governmental organizations, on the draft general guidelines with a view to improving them and to present updated draft guidelines[1] to the Council in 2010; and to cooperate with the Committee on Economic, Social and Cultural Rights, as well as with the Advisory Committee, special procedures, mechanisms and relevant working groups of the Council related to economic, social

[1] The guidelines are designed to ensure that compliance with commitments arising from external debt does not undermine the capacity of States to fulfil their human rights obligations, particularly those relating to economic, social and cultural rights.

and cultural rights and the right to development, in his efforts to improve the draft general guidelines.

5. Cephas Lumina (Zambia) was appointed independent expert on the effects of foreign debt and other related international financial obligations of States on the full enjoyment of all human rights, particularly economic, social and cultural rights, on 26 March 2008. He took up his appointment on 1 May 2008. The new independent expert would like to take this opportunity to thank his predecessors, Fantu Cheru and Bernards A. N. Mudho, for their valuable work under the previous mandate.

II. Foreign debt and human rights

A. United Nations concern with foreign debt and human rights

6. The issue of foreign (or external) debt has been on the agenda of various United Nations human rights bodies for more than two decades. Since the 1990s, the Commission on Human Rights and, subsequently, the Human Rights Council, have, in a number of resolutions and decisions, adverted to the challenges that excessive foreign debt burdens and economic reform policies pose for the realization of human rights, especially in developing countries.[2] Since 1997, those bodies have also attempted to address such issues through the establishment of thematic mandates, which have undergone several changes over the years.

7. The concluding observations of the various treaty bodies on the country reports submitted to them also indicate that high external debt burdens and dependency on foreign assistance can constitute obstacles to efforts by States parties to comply with their human rights treaty obligations, particularly those relating to economic, social and cultural rights.

B. Some key challenges

8. An examination of the resolutions and decisions of the United Nations human rights bodies concerning the issue of foreign debt and economic reform policies over the years reveals disparities in voting patterns concerning the mandate, with the developed (creditor) countries opposing the mandate on the grounds that such bodies were not the appropriate ones to deal with the issue of foreign debt and the developing (mainly borrower) countries overwhelmingly supporting it. That situation has implications for, inter alia, the effective implementation of the general guidelines. However, the independent expert believes that that obstacle can be overcome by acceptance of, and adherence to, the principle of shared responsibility by all stakeholders.

9. It is the independent expert's considered view that the global community has a responsibility to address human rights in a holistic manner and that this should include discussing the causes and context within which human rights violations occur. The burden of foreign debt is a key obstacle to sustainable development and the realization of human rights in many developing countries. Studies indicate that

[2] See Commission on Human Rights resolutions 1998/24, 1999/22, 2000/82, 2001/27, 2002/29, 2003/21, 2004/18 and 2005/19 and Human Rights Council decision 2/109. See also E/CN.4/Sub.2/1991/17.

some countries spend more each year on debt servicing than they do on human rights-related public services, such as education and health, and that despite the debt relief provided by the heavily indebted poor countries initiative and the multilateral debt relief initiative, many countries still have substantial debts which render it difficult for them to implement the Millennium Development Goals and to realize economic, social and cultural rights. Further, the impact of debt relief is often diluted by economic reform policies that debtor countries are frequently required to adhere to or implement, as well as difficult trade conditions.

10. The independent expert notes that there are also some countries that spend a significant portion of their domestic resources on debt servicing at the expense of their obligations related to the realization of economic, social and cultural rights but are excluded from the current debt relief initiatives because they do not meet the eligibility requirements.

11. Those challenges underscore the need for a new approach to the debt problem which, inter alia, incorporates human rights concerns and does not impose harmful economic conditions, as opposed to the approach that has prevailed to date, which focuses exclusively on poverty alleviation.

12. Finally, it is the independent expert's considered estimation that the mandate must be viewed in the general context of, inter alia, the purposes of the United Nations as spelled out in its Charter, including the achievement of international cooperation in solving international problems of an economic and social nature; the appeal by the 1993 World Conference on Human Rights to the international community to help alleviate the external debt burden of developing countries in order to supplement the efforts of such countries to fulfil their human rights obligations; and both the United Nations Millennium Declaration (resolution 55/2) and the Millennium Development Goals (in particular Goal 8, "Develop a global partnership for development"), which underline the responsibility of the international community to assist in the development efforts of the low- and middle-income countries.[3]

III. General approach to the mandate

A. Guiding principles

13. The independent expert's approach to his mandate is informed by a number of core principles: the primacy of human rights law; international cooperation as a human rights duty; participation; and the responsibilities of all actors, including international trade and financial institutions and private corporations.

[3] In para. 25 of the Millennium Declaration, States commit themselves to strengthening the capacity of all countries to implement the principles and practices of democracy and respect for human rights.

The primacy of human rights law and the centrality of human rights

14. It could be argued that States' human rights obligations have primacy over many other types of legal obligations under international law.[4] Consequently, all actions undertaken by States (and international organizations that are subjects of international law) should be consistent with international human rights law.

15. It is also generally accepted that human rights lie at the core of the broader mission of the United Nations. In his report entitled "In larger freedom: towards development, security and human rights for all" (A/59/2005), the Secretary-General reaffirms the significance of human rights as a key purpose of the United Nations, alongside development and security, and underscores the fact that the protection of human rights is essential to building a more secure and prosperous world. At the 2005 World Summit, heads of State or Government endorsed that vision.

International assistance and cooperation as a human rights duty

16. The imperative to address the effects of foreign debt and other related international financial obligations of States on the enjoyment of human rights stems from the principle of international assistance and cooperation, which is implicit or clearly provided for in numerous international human rights instruments. These instruments include the Universal Declaration of Human Rights (article 28); the Declaration on the Right to Development (article 3(3)); the International Covenant on Economic, Social and Cultural Rights (articles 2(1) and 22 and 23)[5] and the Convention on the Rights of the Child (article 4). Also worthy of note is the Millennium Declaration, which specifically acknowledges the collective responsibility of all States.

17. It is notable that international cooperation, in promoting human rights is also a key purpose of the United Nations, as set out in article 1(3) of the Charter. Further, article 56 of the Charter enjoins Member States to cooperate with the Organization in the achievement of its purposes, including the promotion of universal respect for, and observance of, human rights and fundamental freedoms for all.

18. A key aspect of the duty of international cooperation is that States, individually or through membership of international institutions, should not adopt or engage in policies or practices that threaten the enjoyment of human rights.

19. Further, development cooperation should contribute to the promotion of and respect for human rights. It is notable in this regard that the treaty bodies, particularly the Committee on Economic, Social and Cultural Rights,[6] have urged

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[4] Art. 103 of the Charter of the United Nations confirms the pre-eminence of States' obligations to respect human rights: "In the event of a conflict between the obligations of the Members of the United Nations under the present Charter and their obligations under any other international agreement, their obligations under the present Charter shall prevail". The obligations under the Charter include the duty to cooperate with the United Nations in its quest to promote universal respect for human rights (art. 56).

[5] See also general comment No. 3 (1990) of the Committee on Economic, Social and Cultural Rights.

[6] See, for example, its general comment No. 4 on the right to adequate housing, para. 19; general comment No. 12 on the right to adequate food, para. 41; general comment No. 13 on the right to education, para. 60; and general comment No. 14 on the right to the highest attainable standard of health, para. 64.

international financial institutions to pay greater attention to the protection of human rights in their lending policies, credit agreements and debt relief initiatives.

20. Finally, according to the inter-agency statement of common understanding,[7] all programmes of development cooperation, policies and technical assistance should further the realization of human rights as laid down in the Universal Declaration of Human Rights and other international human rights instruments, and human rights standards contained in those instruments guide all development cooperation and planning.

Participation and inclusion

21. All persons are entitled to active, free and meaningful participation in, contribution to and enjoyment of civil, economic, social, cultural and political development in which all human rights can be fully realized.[7]

Responsibilities of all actors

22. While States have the primary responsibility for implementing international human rights obligations, there is a growing consensus that other actors, including international development, trade and financial institutions and private corporations, have the obligation to respect international human rights obligations (see, for example, A/HRC/8/5). Depending on the circumstances, such actors are also obliged to ensure that third parties, such as subcontractors, do not violate human rights and to formulate, adopt, fund and implement policies and programmes which address obstacles to the realization of human rights.

B. Broad objectives

23. Against the backdrop of the foregoing, the independent expert intends to focus on the following broad, interrelated objectives:

(a) To raise awareness about the need to consider foreign debt as a human rights issue and, in this regard, to broaden support for the mandate through consultations with all stakeholders;

(b) To undertake a thematic study on foreign debt and human rights in order to identify and clarify some conceptual issues which could also inform the draft general guidelines;

(c) To review, revise and develop the draft general guidelines.

24. The independent expert welcomes comments and suggestions on those broad objectives.

IV. Plan of implementation

25. The plan of implementation generally builds on the contributions made by the previous mandate holders and charts a course for the fulfilment of the mandate. To

[7] See "The human rights based approach to development cooperation: towards a common understanding among United Nations agencies", available from http://www.undp.org/governance/ docs/HR_Guides_CommonUnderstanding.pdf.

that end, the independent expert commits himself to undertaking the activities set out in paragraphs 26 to 40 below.

A. Consultation and cooperation

26. The independent expert believes that ongoing dialogue with all stakeholders, including those States that have traditionally been reluctant to support the mandate, is important for the successful fulfilment of the mandate and will greatly enhance the prospects for general acceptability and effective implementation of the draft general guidelines.

27. In an attempt to broaden support for his mandate, the independent expert will actively engage in dialogue with all stakeholders — Governments, international organizations and civil society — a task which is specifically spelled out in the mandate.

28. In the limited time available between his assumption of the mandate and the deadline for the submission of the present preliminary report, the independent expert initiated contact and informally consulted, to the extent possible, with some States; a range of United Nations officials, including in the Research and Right to Development Division of the Office of the United Nations High Commissioner for Human Rights and in the United Nations Conference on Trade and Development; the Chairperson of the Committee on Economic, Social and Cultural Rights; and officials of the World Bank, the International Monetary Fund and the World Trade Organization based in Geneva. The independent expert has also had informal discussions with Mr. Cheru, former independent expert on the effects of economic reform policies and foreign debt on the full enjoyment of all human rights, particularly economic, social and cultural rights.

29. On 3 July 2008, the independent expert had an informal meeting with civil society organizations based in Geneva with a view to (a) introducing his mandate and outlining his approach thereto; and (b) exploring areas of future cooperation, particularly with regard to the development of the draft general guidelines.

30. The independent expert is grateful to all those with whom he has had meetings and looks forward to enhancing such consultations over the course of his mandate.

31. Over the next few months, the independent expert will also consult with officials of the European Union, the European Parliament, the Organization for Economic Cooperation and Development, the Commonwealth Secretariat and the international financial institutions based in Washington, D.C., as well as with a number of non-governmental organizations concerned with economic, social and cultural rights. He will also participate in the 2008 Social Forum, to be held in Geneva from 1 to 3 September, the workshop on integrating human rights in financing for development, to be held in Geneva from 15 to 17 September 2008 and the Follow-up International Conference on Financing for Development to Review the Implementation of the Monterrey Consensus, to be held in Doha from 27 November to 2 December.

32. The independent expert recognizes that civil society is an indispensable partner in the fulfilment of his mandate. He believes that he can benefit from the support, expertise and analysis of civil society. To that end, the independent expert has accepted an invitation to participate in the International Strategy Meeting on

Economic, Social and Cultural Rights and ESCR-Net General Assembly, to be held in Nairobi from 1 to 4 December 2008, which will bring together a number of non-governmental organizations working in the area of economic, social and cultural rights. He will also endeavour to extend consultations with civil society organizations actively engaged in the implementation of human rights in general and economic, social and cultural rights in particular, throughout the world.

B. Study on foreign debt and human rights

33. Depending on the availability of resources, the independent expert proposes to undertake a study on foreign debt and human rights. The main purpose of the study will be to clarify the conceptual basis of the mandate and to contribute to raising its profile.

34. The study will address a number of issues, including coherence among policies governing foreign debt, international trade and official development assistance; illegitimate or odious debt; the participation of rights-holders in the policy formulation process; and the accountability of debtor countries and creditors.

35. It is anticipated that the results of the study will feed into the process concerning the review, development and updating of the draft general guidelines.

C. Draft general guidelines

36. In Human Rights Council resolution 7/4, the independent expert is requested to further develop and submit to the Council, in 2010, updated draft general guidelines to be followed by States and by private and public, national and international financial institutions in the decision-making on and execution of debt repayments and structural reform policies, including those arising from foreign debt relief.

37. The independent expert believes that in order to guarantee the acceptability of the draft guidelines and their subsequent implementation, it is essential to ensure the fullest possible participation of all stakeholders in their finalization. Thus, in keeping with his mandate, and resources permitting, he proposes to convene multi-stakeholder regional consultations on the draft general guidelines. The independent expert hopes to gain insights from the various perspectives on how best to proceed with the task of updating the guidelines.

38. The independent expert recognizes that the implementation of the general guidelines should benefit all, particularly women, young people, children and other vulnerable groups. In this regard, the independent expert commits himself to ensuring the fullest integration of a gender perspective, as well as the core principle of equality and non-discrimination, into the draft general guidelines.

D. Other activities

39. In keeping with the requirements of his mandate, the independent expert also intends to undertake country visits for the purpose of assessing the measures taken by States and international financial institutions to alleviate the effects of foreign

debt and other related international financial obligations of States on the full enjoyment of all human rights. Subject to invitation and criteria relating to debt burdens, the independent expert will endeavour to visit countries representing different regions of the world, particularly those countries which have never been visited by special procedure mandate holders.

40. It is anticipated that some of the insights gained from the country visits will also inform the review, revision and development of the draft guidelines.

V. Conclusion

41. **The present preliminary report outlines the independent expert's approach to his mandate and charts a course of action for the duration of his mandate. The independent expert is hopeful that, with the support and cooperation of all stakeholders, he will successfully realize his vision for the mandate and achieve the goals that he has set for himself over the course of the mandate.**

42. **The independent expert recognizes that the implementation of aspects of the mandate, particularly the proposed regional consultations on the draft general guidelines, will require the allocation of additional resources. In this regard, the independent expert requests States to consider making extrabudgetary contributions to the Office of the United Nations High Commissioner for Human Rights to enable the Office to provide support for the proposed regional consultations until the Human Rights Council can consider his request.**